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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Eligibility for the Specialized Mobile) GN Docket 94-90
Radio Services and Radio Services)
in the 220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GTE's COMMENTS

GTE Service Corporation ("GTE") on behalf of GTE's telephone and wireless companies hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM" or "Notice") in the above-captioned proceeding.¹ The Commission proposes in the Notice to eliminate its prohibition against wireline telephone common carriers holding Specialized Mobile Radio Service ("SMR") and 220 MHz Mobile Radio Service licenses, and to eliminate the current prohibition against the provision of dispatch service by cellular and other public mobile service licensees.²

BACKGROUND

Wireline telephone companies have been prohibited from holding SMR base station licenses since the creation of SMR service in 1974. The prohibition

¹ Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, Notice of Proposed Rulemaking, GN Docket No. 94-90, FCC 94-202 (Released August 11, 1994).

² Id. at 2.

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was deemed necessary in order to promote competition in the nascent SMR industry, to protect against discriminatory interconnection practices by wireline carriers, and to ensure that SMR licenses were available to small entrepreneurs.³ Upon establishing the 220 MHz service in 1991, the Commission extended the wireline prohibition to the new service without discussion.⁴ In response to a petition for reconsideration filed by GTE, however, the Commission indicated that rationale for excluding wireline carriers from holding SMR licenses was also the basis for extending the wireline prohibition to 220 MHz service.⁵

The Commission initially proposed eliminating the SMR wireline prohibition in 1986.⁶ While the Commission eventually granted several waivers of section 90.603(c) of its rules, it failed to eliminate the prohibition and

³ NPRM at 5-6, citing An Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz; and Amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the Rules Relative to Operations in the Land Mobile Service Between 806 and 960 MHz, Second Report and Order, Docket No. 18262, FCC 74-470, 46 FCC 2d 752, 760-769, and 787 (1974). The wireline prohibition adopted in that order is codified at 47 C.F.R. § 90.603(c).

⁴ See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Report and Order, PR Docket No. 89-552, 6 FCC Rcd 2356 (1991). The wireline prohibition applicable to 220-222 MHz service is codified at 47 C.F.R. § 90.703(c).

⁵ Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Memorandum Opinion and Order, PR Docket No. 89-552, 7 FCC Rcd 4484, 4487 (1992). The Commission covered for its failure to explain the rationale for the prohibition in the initial order by stating that the wireline prohibition was "inspired by the treatment of Specialized Mobile Radio Service licenses."

⁶ Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band, Notice of Proposed Rulemaking, PR Docket 86-3, 51 Fed.Reg. 2910 (January 22, 1986) (hereinafter "1986 NPRM").

terminated the proceeding due to the staleness of the record.⁷ The Termination Order required parties holding section 90.603(c) waivers to rejustify their waiver grants. In the course of commenting on these and other waiver requests, GTE joined several parties in asking the Commission to again open a rulemaking proceeding proposing to eliminate the wireline prohibition.⁸

In response to those comments and in light of the recent reclassification of most SMR and 220 MHz services as “commercial mobile radio services” (or “CMRS”),⁹ the Commission opened this proceeding proposing to eliminate the wireline prohibition for both SMR and 220 MHz service.

The current dispatch service prohibition was enacted by Congress in its 1982 amendments to the Communications Act. Congress prohibited common carrier (including cellular) dispatch radio service while allowing such services to be provided by private land mobile licensees.¹⁰ Congress adopted the prohibition in response to fears that scarce common carrier mobile frequencies

⁷ Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band, Order, PR Docket 86-3, 7 FCC Rcd 4398 (1992) (hereinafter “Termination Order”).

⁸ See, e.g., Requests for Waiver of Section 90.603(c) of the Commission's Rules to Permit Wireline Common Carriers to Hold SMR Licenses, DA 94-329, GTE's Reply Comments, filed June 3, 1994.

⁹ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994). In that proceeding, the Commission decided to reclassify as CMRS SMR and 220 MHz services that are interconnected to the public switched telephone network. The Commission also found that other SMR and 220 MHz services could be classified as CMRS upon a showing that such services are the functional equivalent of CMRS. Id. at 1450-1452.

¹⁰ NPRM at 9.

would be devoted to dispatch service, thus limiting the available capacity for common carrier mobile services.¹¹ As part of the 1993 Omnibus Budget Reconciliation Act, however, Congress amended the Communications Act, inter alia, to give the Commission authority to repeal the dispatch ban in whole or in part.¹²

DISCUSSION

1. SMR and 220 MHz Service

Since 1986, GTE has consistently supported efforts to repeal the wireline carrier prohibition applicable to SMR and similar services. In 1986, GTE argued that “allowing wire line carriers to provide [SMR service] will benefit customers by further enhancing competition and potentially bringing SMRS to areas where the service is not currently offered.”¹³ Similarly, in 1991, GTE filed a petition for reconsideration of the wireline carrier prohibition in the Commission’s proceeding creating commercial 220 MHz service. There, GTE argued that “wireline telephone companies and their affiliates are exceptionally well qualified to promote the development of narrowband technology and to deploy this technology to meet the needs of private land mobile users.”¹⁴

¹¹ Id.

¹² Pub. L. No. 10366, Title VI, 6002(b)(2)(A), (B), 107 Stat. 312, 392-397 (1993). The language regarding the dispatch prohibition is codified at 47 U.S.C. § 332(c)(2) (1993).

¹³ Comments of the GTE Telephone Companies in response to the 1986 NPRM (filed May 19, 1986) at 2-3.

¹⁴ Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, Petition for Reconsideration in Part (filed May 30, 1991 by GTE Service Corporation).

The subject of wireline telephone exclusions arose again in 1992 in the course of a Commission proceeding to replace part 90 of its rules with new part 88. In that proceeding, GTE argued against a wireline carrier exclusion for a new type of shared use radio operation, stating that "the Commission should allow all bona fide applicants that can demonstrate financial qualifications and the ability to operate the system to be included in the lottery for these new innovative shared use licenses."¹⁵

Finally, earlier this year, GTE filed reply comments in the Commission's proceeding considering six requests for waiver of section 90.603(c) of the Commission's Rules. There, GTE joined several other parties in asking the Commission to eliminate the SMR wireline telephone company prohibition in a rulemaking proceeding.¹⁶

GTE has demonstrated in these pleadings and continues to believe that allowing wire line telephone carriers to provide SMR and other CMRS serves the public interest. GTE believes that wireline telephone carriers would bring expertise and innovation to the SMR and 220 MHz service marketplaces, and would improve competition for all CMRS.

In addition, elimination of the wireline carrier prohibitions would be an important step by the Commission towards implementing the congressional

¹⁵ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, GTE's Comments at 4-5 (filed May 28, 1993).

¹⁶ Requests for Waiver of Section 90.603(c) of the Commission's Rules to Permit Wireline Common Carriers to Hold SMR Licenses, DA 94-329, GTE's Reply Comments, filed June 3, 1994.

mandate to ensure that similar mobile services will be subject to similar regulations.¹⁷ Since the adoption of the wireline carrier prohibitions, technological advances have enabled holders of SMR and other former private land mobile service licenses to offer services that compete directly with cellular and paging services -- services that have no prohibition against wireline carriers holding licenses. The markets for all CMRS are extremely competitive and will become more so with the advent of new personal communications services ("PCS"). Because SMR and 220 MHz services compete with other CMRS, there is no rational basis why the regulations for these services should differ substantially from those applicable to other CMRS. Thus, in keeping with the congressional mandate, the Commission should act now to ensure that all providers of CMRS play by similar rules. The time has come for the Commission to modify its rules to allow any qualified entity -- including wire line telephone common carriers -- to hold SMR and commercial 220 MHz service licenses.

2. Dispatch Service

GTE likewise supports repeal of the prohibition against the use of common carrier spectrum to offer dispatch service. Last year, in comments and replies filed in the Commission's proceeding considering the regulatory treatment of mobile services, GTE urged the Commission to repeal the dispatch ban.¹⁸

¹⁷ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, 1413, 1418 (1994).

¹⁸ Implementation of Section 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, GN Docket No. 93-252, GTE Comments at 13 (filed November 8, 1993), GTE Reply Comments at 7 (filed November 23, 1993).

There, GTE argued that in light of technological advances and the Congressional mandate for regulatory parity among providers of CMRS it is necessary for the Commission to permit all CMRS providers to offer dispatch service. GTE stated that the imposition of the dispatch prohibition constituted an artificial market distinction that impedes the efficient use of spectrum resources.¹⁹

GTE continues to believe that repeal the prohibition against common carrier provision of dispatch service will serve the public interest. GTE believes that any qualified entity – including common carrier mobile service providers – should be allowed to provide dispatch service.

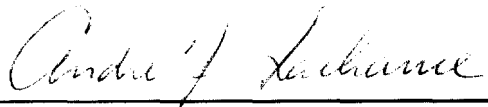
¹⁹

See Id.

In summary, GTE wholeheartedly supports removing the wireline carrier prohibition as it applies to both SMR service and commercial 220 MHz service. GTE has consistently and repeatedly supported removal of the wireline carrier prohibitions for both of these services. GTE also urges the Commission to repeal the prohibition against common carrier provision of dispatch service. GTE strongly believes that removal of these barriers to mobile services competition will bring diversity and know-how to the competitive mobile services industry. Removal of these rules would also be an important step towards implementing Congress's intent in creating regulatory parity among providers of similar mobile services.

Respectfully submitted,

GTE Service Corporation and its telephone
and wireless companies

A handwritten signature in cursive script, reading "Andre J. Lachance", written in dark ink.

Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5276

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Their Attorney